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16 December 1977

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Status of the Law of the Sea Negotiations and Agency Support Activities

1. With the growing feeling among participating nations that next spring's seventh session of the Law of the Sea Conference will be the last substantive session -- make or break -- the current intersessional period is seeing the most intensive discussions and maneuvering among the various interest groups since the oceans treaty talks began in 1974. Larger nations are becoming impatient over the continued lack of progress in resolving such outstanding issues as devising an equitable international system for deep seabed mining, while many smaller countries with little direct interest in ocean matters are complaining of the high cost of participating in the seemingly interminable talks. The well-publicized LOS policy review now underway by the US Government as to how our delegation should proceed in the March-May session in Geneva next year, and indeed, whether or not the US should even continue to take part in the Conference, is having the intended effect of helping to stimulate meaningful action on the part of the other delegations. The outcome of the US policy review will largely depend on the results of the major LOS intersessional meeting to be held in late January-early February, which will set the tone and procedures for the formal seventh session opening on 28 March in Geneva.

2. During this intersessional period, Ambassador Elliot Richardson, head of the US delegation, has worked closely with the other technologically advanced nations to gain greater leverage against the ideological and unreasonable demands of the Third World bloc -- the Group of 77 -- which thus far have prevented a solution to the seabed mining issue. Mutual discussions on contingency planning for unilateral seabed legislation, and for a possible alternative "mini-treaty" approach have been held. Overall, US strategy has two principal objectives: 1) to obtain broad agreement prior to the March session on a new basis for negotiations on seabed mining to

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replace the unacceptable draft articles now incorporated in the Informal Composite Negotiating Text (ICNT); and 2) to revamp conference procedures so as to ensure that any negotiated consensus that may henceforth be reached on the seabed mining issue and other outstanding problems, will remain intact. This twin push is a reaction to events that occurred near the close of the sixth LOS session last July in New York. At that time, Paul Engo of the Cameroon, chairman of the committee responsible for seabed mining, unilaterally and subjectively altered a text that had been drawn up by Jens Evensen of Norway on the basis of broad, open negotiations. The so-called Evensen text, while falling short of several US requirements, nevertheless could have served as a satisfactory starting point for negotiations at the March session. (The attached memo describes this incident and its implications in greater detail).

3. The LOS Conference President, Hamilton Shirley Amerasinghe of Sri Lanka, seems to be receptive to the US strategy. He is appointing a working group to propose revisions of the ICNT on the basis of critiques of the existing seabed mining articles, and he plans to hold the March session in plenary fashion so as to negate the present power of committee chairmen to make arbitrary changes in negotiated texts. There is considerable support for these reforms, including the approval of several moderate developing countries. The overall situation is extremely delicate, however. Some of the more obdurate members of the Group of 77 are suspicious of collusion between the developed nations and such pivotal conference figures as Amerasinghe and Evensen. These countries are threatening to reopen other parts of the ICNT favorable to the US -- such as the provisions for freedom of navigation in the 200-mile Economic Zone -- if attempts are made to "rectify" the ICNT as regards ocean mining. Another factor that could upset the LOS appletart is the aggressive intent of the landlocked and geographically disadvantaged states (LL/GDS) -- some 53 strong -- to seek trade offs in the seabed mining and other outstanding issues in return for support for their demands for access to the living resources in the Economic Zones of neighboring coastal states.

4. The Agency, represented on the NSC Interagency Group for the Law of the Sea by the undersigned, has been called upon to review and critique various LOS option papers, including recommendations to the President by Ambassador Richardson. NFAC, the locus of the Agency's LOS support apparatus, has also responded to ad hoc requests by the LOS delegation for analysis of the actions taken by foreign LOS negotiators and information on foreign delegates to the LOS Conference. OGCR personnel

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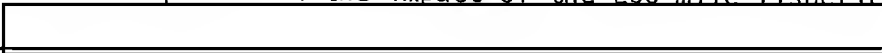
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participate in the planning sessions of the Interagency LOS Group, and are producing an all-encompassing study of the deep seabeds issue. OER has reported on the impact of the 200-mile fisheries claims.



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reports on these matters. With the approach of the March session of the Conference it is anticipated that our negotiating team will again need intelligence support in the form of assessments of foreign tactics, and a biographic briefing package comparable to OCR's contributions in the past.

5. A number of NFAC intelligence officers continue to closely follow these subjects and are ready to provide such additional support.



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Chief
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Attachment:
As stated above.

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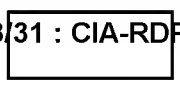
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17 November 1977

MEMORANDUM

SUBJECT: Update on the Law of the Sea Negotiations

1. The Sixth Session of the Third UN Conference on Law of the Sea tottered to an indecisive halt in New York in July. It produced a call to still another session in Geneva next spring and an Informal Composite Negotiating Text (ICNT) -- a revision of two earlier drafts of 303 Articles on ocean issues, ranging from fisheries management to the mining of mineral-rich nodules from the ocean floor.

2. In a press conference after the new text appeared, Ambassador Elliot Richardson, head of the US delegation, took note of progress that had been made on significant navigational questions, but on the intensely ideological issue of seabed mining termed the result "fundamentally unacceptable" to the United States. The LOS conference was still a long way from reaching consensus in its effort to build a new institution acceptable to both the developed and developing worlds.

3. This year began with a ray of hope. Intersessional meetings held in Geneva in February, under the chairmanship of Minister Jens Evensen of Norway, began the job of fleshing out the proposal for an International Seabed Authority (ISA), subject to review in 20 years, with financing for its mining arm, the Enterprise, to be provided or guaranteed by both the developed and developing nations on a basis proportionate to the UN scale of assessments.

4. By and large, progress along these lines continued during the first weeks of the summer session, with Evensen acting as the Working Group Leader for the Chairman of Committee I, Paul Engo of the Cameroon. His work led to the drafting of a text, informally bearing his name, which featured certain improvements. Among these were changes in the contracting procedures that tend to limit the ISA's discretionary control over access by corporations to half of the mining sites; developed states would be obliged to "promote" technology transfer to the Authority and developing states but contractors would not be obligated to transfer technology; and the 20-year review provisions would not necessarily lead to the phase-out of the parallel access system. The Evensen text also balanced the voting powers of the executive council of the ISA in such a way as to provide reasonable assurance to the developed world that it would not be subject to arbitrary decisions imposed by the far more numerous countries in the Group of 77.

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5. Not all seabed issues, however, were being resolved in a manner satisfactory to the United States. As the Evensen text evolved, it became more restrictive in the area of production controls. The total permissible amount of seabed production was reduced first to 75 percent and later to two-thirds of the estimated growth segment of the world nickel market. This tilted the entire resource policy toward restriction and protectionism rather than encouragement of production of manganese, nickel, cobalt, and copper from the seabed. Canada, the world's largest producer of nickel, led the fight for production controls, collaborating with developing copper and nickel producers -- Chile, Peru, Zaire, Indonesia, and Cuba.

6. Leading maritime and coastal states met during the final three weeks of the session and reached compromise on a series of issues that cut across committee lines, each of which affected the balance of rights and duties of coastal and other states within the 200-mile economic zones. Most importantly, new provisions were negotiated which appear to safeguard traditional high seas freedoms of navigation and overflight within the economic zone. The broadly supported articles on transit through, under, and over international straits were retained as the opposition of a small number of states to these provisions continued to wane.

7. The result on marine scientific research was mixed. It was possible to narrow the scope of the listed categories of research activities for which the coastal state can deny consent, but the text still sanctions a regime wherein research in the economic zone is generally subject to the consent of the coastal state.

8. Progress was also made in eliminating earlier texts that could have prevented the United States from imposing environmental rules to forestall pollution by foreign ships in its territorial sea. The United States also retained the right to set strict environmental standards -- including construction, design, manning, and equipment regulations -- for vessels entering American ports.

9. The single most important decision affecting the system of compulsory dispute settlement was the acceptance by the Group of 77 and the majority of other delegations of a single Law of the Sea Tribunal with a Seabed Disputes Chamber, the latter's members to be selected from the justices of the full Tribunal. The Chamber would have exclusive and compulsory jurisdiction over all legal disputes arising under the seabed mining articles of the draft text. It was also possible to preserve compulsory dispute settlement for both fisheries and scientific research within the economic zone, provided that discretionary acts of the coastal state could not be the subject of judicial challenge.

10. As the negotiations progressed, a broadly acceptable draft treaty appeared to be within grasp. Then, two events occurring late in the session brought an end to such hopes. First, the Conference

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leadership postponed the deadline for issuing the Informal Composite Negotiating Text, which originally had been set for the end of the sixth week. This removed the pressure needed to force the settlement of disputed issues. Issuance of the ICNT, in fact, was delayed until five days after the session had concluded.

11. The second setback affected the Committee I text. For reasons not clearly understood, Paul Engo chose to tamper with the delicate balance that the Evensen texts had attempted to achieve. On other seabed issues that had not been subject to the Evensen negotiating process, Engo inserted provisions that were also wholly unacceptable to the developed states. Procedurally, he and all committee chairmen had the right to make changes in the texts. Unfortunately, there was neither time nor a parliamentary process available for appealing Engo's actions.

12. The Chairman's last-minute changes rendered the Committee I text, in the words of Ambassador Richardson, "fundamentally unacceptable." Among the objectionable amendments were provisions for the mandatory transfer of technology to the Authority and to developing countries as a condition of access to mine sites and the imposition of heavy financial burdens that could effectively deter any private investment in the seabed by mining firms. The Authority was given broad open-ended powers to regulate all other mineral production from the seabed "as appropriate," a worrisome grant of discretion in view of the elimination of the compromise achieved in the Evensen text relating to voting powers in a chambered executive council. Other Engo changes would give the Authority unacceptable new power to regulate scientific research in the international area of the oceans beyond the limits of national jurisdiction and would further reduce the artificial limit on minerals production from nodules to 60 percent of the estimated growth segment of the world nickel market.

13. Developed states decried the process by which the Committee I text was altered, pointing out that the procedure lacked fundamental fairness. There were allegations that the text was produced in secret, with the participation of only a handful of states representing a single viewpoint, that of the Group of 77.

14. Various explanations are offered for Engo's assault on the Evensen text. Some parties believe that his radical amendments were intended to reestablish his credentials with the Third World proponents of the New International Economic Order. He may have received important encouragement in these efforts from a core group of advisers including delegates from Sri Lanka, Tanzania, Jamaica, Singapore, and India.

15. Another theory is that Engo may have been encouraged by Brazil and Peru, strong territorialists desiring to legalize their claims of sovereign authority over offshore areas, who were angry at the progress made on the high seas freedoms of all states in the economic zone.

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16. A third hypothesis has it that a group of geographically disadvantaged states, including Singapore, the Cameroon, Trinidad, and Jamaica, may have been responsible for the last-minute changes in the seabeds text. These states, according to this theory, were seeking to involve the United States and other developed nations in their effort to obtain concessions on fishing rights in the economic zones of their neighbors.

17. Because of the serious defects of the deep seabeds section of the ICNT, Ambassador Richardson recommended to the President that the United States review the balance among all of our substantive ocean interests and consider whether any agreement which accommodates all national interests can be achieved through the kind of negotiations that have taken place thus far. The review will also examine alternative ways of protecting and advancing our LOS interests in the absence of a comprehensive treaty.

18. There are at least two major procedural problems facing the United States at the next session of the conference. The delegation fears the prospect of having to negotiate between the Evensen text and the ICNT and is gravely concerned about continuing conference procedures that have allowed unilateral changes to texts previously negotiated. An effort to circumvent these problems is under way, starting with meetings this month in Geneva with Minister Evensen, the Group of 5 (US, UK, France, Japan, USSR), and other like-minded developed nations. These will be a prelude to an open-ended inter-sessional meeting in January under the chairmanship of the Conference President (Amerasinghe of Sri Lanka), where a major effort will be made by the United States to discard the ICNT seabed articles and negotiate a new Committee I Text.

19. There is, in addition to the critical seabed mining problem, a key pair of politically related LOS issues awaiting resolution in Geneva. It is now apparent that the question of the definition of the resource rights of states where the continental shelf extends beyond 200 miles is matched with the rights of the land-locked/geographically disadvantaged states (LL/GDS) to fish in neighboring economic zones. The latter group, numbering 53 states, argue for the "right" to participate in fishing activities in neighboring waters, with the "right" to apply to the surplus fish stocks which the coastal state cannot itself harvest as well as in cases where there is no surplus.

20. The LL/GDS are withholding their acceptance of the rights of broad margin states to resources lying beyond 200 miles until their fishing demands are met. The ten broad margin states, however, adamantly maintain that they already have resource rights extending to the edge of the continental shelf, such rights being certified by the 1958 Convention on the Continental Shelf and by customary international law. This jeopardizes the earlier belief that accommodation of the broad margin

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issue would rest upon a precise definition of the width of the shelf beyond 200 miles coupled with revenue sharing based upon a royalty on oil and gas production between the 200-mile line and the seaward limit of jurisdiction over the margin. Revenue sharing, based upon an incremental formula, would yield revenues for distribution to developing countries.



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